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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91206921
Party	Defendant VegiPro Brands, LLC DBA Exposure SMI
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Date	12/04/2013
Attachments	Applicant's Response to OSC.pdf(180728 bytes)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

Rich Products Corporation,

Opposer,

v.

VegiPro Brands, LLC,

Applicant.

Opposition No. 91206921
Application Serial No. 85/577,551
Mark: BETTER ON TOP!

APPLICANT'S RESPONSE TO ORDER TO SHOW CAUSE

Applicant respectfully requests that the Notice of Default be set aside. On July 25, 2013, Opposer Rich Products Corporation filed a Motion for Leave to Amend Notice of Opposition. Because Applicant did not oppose the Motion, Applicant was waiting for the Board to grant the Motion. However, the Board issued no Order on the Motion. Rather, the Board then issued the Notice of Default on November 5, 2013. Apparently, even though Opposer was making a Motion and asking for leave to amend, the Board determined that the proposed amended Notice attached to the Motion was "deemed" filed. Applicant was not aware that that the attached pleading would be deemed filed when a Motion had been filed. Rather, Applicant was expecting a ruling on the Motion. Accordingly, Applicant's failure to respond was the result of this misunderstanding and unintentional. For these reasons, Applicant's requests that the Board set aside the default and accept Applicant's Answer, attached hereto as Exhibit A.

Dated: December 4, 2013

Respectfully submitted,



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EXHIBIT A

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
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Rich Products Corporation,

Opposer,

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VegiPro Brands, LLC,

Applicant.

Opposition No. 91206921
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**APPLICANT VEGIPRO BRANDS, LLC'S ANSWER TO FIRST AMENDED NOTICE
OF OPPOSITION**

Applicant VegiPro Brands, LLC ("Applicant") hereby answers the Notice of Opposition filed by Rich Products Corporation ("Opposer") as follows:

In response to the grounds for opposition enumerated in Opposer's Electronic System for Trademark Trials and Appeals ("ESTTA") Notice of Opposition form, Applicant denies that there are any grounds to sustain the opposition and denies that Opposer owns any mark(s) sufficient to constitute a basis for the opposition.

In response to the unnumbered introductory paragraph, Applicant denies that Opposer will be damaged by the registration of Application Serial No. 85/577,551.

1. In response to paragraph 1, Applicant admits that, on March 22, 2012, it filed U.S. Trademark Application Serial No. 85/577,551 for BETTER ON TOP! in connection with "whipped topping" on an intent-to-use basis. Except as expressly admitted, Applicant denies the allegations in paragraph 1.

2. In response to paragraph 2, Applicant admits that it did not make interstate commerce use of its BETTER ON TOP! trademark in connection with "whipped topping" prior

to March 22, 2012. Except as expressly admitted, Applicant denies the allegations in paragraph 2.

3. In response to paragraph 3, Applicant responds that it lacks sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 3 and, therefore, denies each and every allegation in paragraph 3.

4. In response to paragraph 4, Applicant responds that it lacks sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 4 and, therefore, denies each and every allegation in paragraph 4.

5. In response to paragraph 5, Applicant responds that it lacks sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 5 and, therefore, denies each and every allegation in paragraph 5.

6. In response to paragraph 6, Applicant responds that it lacks sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 6 and, therefore, denies each and every allegation in paragraph 6.

7. In response to paragraph 7, Applicant responds that it lacks sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 7 and, therefore, denies each and every allegation in paragraph 7.

8. In response to paragraph 8, Applicant responds that it lacks sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 8 and, therefore, denies each and every allegation in paragraph 8.

9. In response to paragraph 9, Applicant denies each and every allegation in paragraph 9.

In response to Opposer's WHEREFORE and prayer for relief paragraph, Applicant denies that there is a basis to sustain the opposition and states that Application Serial No. 85/577,551 should be allowed to register.

AFFIRMATIVE DEFENSES

By way of further answer, Applicant alleges and asserts the following defenses in response to the allegations contained in the Notice of Opposition. In this regard, Applicant undertakes the burden of proof only as to those defenses that are deemed affirmative defenses by law, regardless of how such defenses are denominated in the instant Answer. Applicant reserves the right to assert other affirmative defenses as this opposition proceeds based on further discovery, legal research, or analysis that may supply additional facts or lend new meaning or clarification to Opposer's claims that are not apparent on the face of the Notice of Opposition.

FIRST AFFIRMATIVE DEFENSE
NO INJURY OR DAMAGE

10. Opposer's claims are barred, in whole or in part, because Opposer has not and will not suffer any injury or damage from the registration of Applicant's U.S. Application Serial No. 85/577,551 for BETTER ON TOP!

SECOND AFFIRMATIVE DEFENSE
LACK OF LIKELIHOOD OF CONFUSION

11. Applicant's mark differs in terms of sight, sound, and meaning from Opposer's claimed mark(s) and has a distinct commercial impression from Opposer's claimed mark(s).

12. Applicant's registration of Applicant's mark does not create a likelihood of confusion among consumers that Applicant's goods are offered by, are sponsored by, or are otherwise endorsed by Opposer. Nor does Applicant's use or registration of Applicant's mark create a likelihood that consumers falsely will believe that Applicant and Opposer are affiliated in any way.

THIRD AFFIRMATIVE DEFENSE
FAILURE TO STATE A CLAIM

13. Opposer's claims are barred, in whole or in part, because Opposer has failed to state a claim for deceptiveness or for false suggestion of a connection, as Opposer has not pleaded the elements of these claims.

WHEREFORE, Applicant requests judgment as follows:

1. That the Notice of Opposition be dismissed with prejudice;
2. That Application Serial No. 85/577,551 be allowed to register; and
3. That Applicant be granted further reasonable and appropriate relief.

Dated: December 4, 2012

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the following document:

**APPLICANT VEGIPRO BRANDS LLC'S RESPONSE TO ORDER TO SHOW
CAUSE**

has been served on

Brian E. Turung
Fay Sharpe LLP
1228 Euclid Ave.
The Halle Bldg., 5th Floor
Cleveland, Ohio 44115

by mailing such document on December 4, 2013 by First Class Mail, postage prepaid.

I declare under penalty of perjury under the laws of the State of California and the United States of America that the foregoing is true and correct.

Dated: December 4, 2013



Bruno W. Tarabichi